

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:09CR197 ALM/CAN
	§	
JACOLBY FITZGERALD SIMMONS (3)	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the Government's request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 6, 2016, to determine whether Defendant violated his supervised release. Defendant was represented by Felix Marquez. The Government was represented by Tracey Batson.

On April 14, 2011, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of seventy (70) months imprisonment followed by a four (4) year term of supervised release for the offense of Conspiracy to Possess with Intent to Distribute Cocaine Base. Defendant began his term of supervision on March 17, 2015.

On September 19, 2016, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 232). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotice or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician; (3) Defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law

enforcement officer; and (4) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U. S. Probation Office, until such time as Defendant is released from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) Defendant was arrested for driving while intoxicated on July 16, 2016, Defendant entered a plea of guilty to Driving While Intoxicated in the County Court at Law of Bowie County, Texas (16M1245-CCI), and was sentenced to twelve (12) months probation, one hundred eighty (180) days confinement (suspended), \$1,000.00 fine, \$407.00 court costs and one hundred (100) hours community service; (2) Defendant tested positive for marijuana on September 28, 2015, and Defendant tested positive for cocaine on October 5, 2015; (3) Defendant was arrested September 4, 2016, by the Gregg County Sheriff's Office for driving while intoxicated and failed to notify the probation officer; and (4) Defendant failed to appear for random drug testing on September 16, 2015, April 12, 2016, April 25, 2016, and July 11, 2016.

At the hearing, Defendant entered a plea of true to allegations: (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician; (4) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance of the U. S. Probation Office, until such time as Defendant is released from the program by the probation officer. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, and having considered the arguments presented at the October 6, 2016, hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twelve (12) months and one (1) day, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in FCI Beaumont, if appropriate.

SIGNED this 27th day of October, 2016.

A handwritten signature in black ink, appearing to read 'K. Priest Johnson', written over a horizontal line.

KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE